

Award No. 6295

Docket No. 6144

2-SLSF-EW-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the St. Louis-San Francisco Railway Co. violated the current agreement when it unjustifiably denied Shopcraft Electrician Ronald D. Estes the right to be excused to serve on jury duty at Springfield, Mo., before the Green County, Missouri Magistrate Court, and further violated the agreement by failing to compensate Electrician Estes for time served on said jury duty.

2. That accordingly, the St. Louis-San Francisco Railway Co. be directed to compensate Electrician Estes at the rate of time and one-half for eight (8) hours on the dates of March 30, April 1 and April 3, 1970, less the amount per day received from Greene County, account of the above violation by the St. Louis-San Francisco Railway Company.

EMPLOYES' STATEMENT OF FACTS: Shopcraft Electrician Ronald D. Estes, hereinafter referred to as claimant, was regularly employed and assigned by the St. Louis-San Francisco Railway Company, hereinafter referred to as carrier, as a Shopcraft Electrician at the Springfield, Missouri Diesel Shop on the third shift from 12 A.M. to 8 A.M., Monday through Friday, with Saturday and Sunday as rest days, for the purpose of performing overhaul, maintenance and inspections on the Diesel-Electric Locomotives used for the purpose of pulling freight over the lines of the Railway Company.

On or about March 20, 1970, claimant was summoned by the proper authorities of Greene County, Missouri to serve as a prospective juror before the Magistrate Court during the period March 23 through April 3, 1970.

Claimant, in compliance with the agreement applied to the court to be exempted from jury duty and the request was denied under date of March 20, 1970.

Under date of March 20, 1970, claimant requested in writing of the Diesel Shop Master Mechanic to be excused from duty from his assignment on the

(5) When an employe is excused from railroad service account of jury duty the carrier shall have the option of determining whether or not the employe's regular position shall be blanked, notwithstanding the provisions of any other rules.

(Taken from Article III, Conference Committee Agreement, September 2, 1969.)"

The Claimant received a summons for jury duty during the period March 23 through April 3, 1970. The Claimant applied for exemption from the summons, and when that request was denied, the Claimant thereupon made request to the Master Mechanic that he be relieved from duty for the duration of the summons. The Master Mechanic declined the requested relief, but also informed the Claimant that he would be excused if it became necessary because of his jury duty.

In the foregoing circumstances, the Carrier denies that it acted unjustifiably in declining to excuse him from duty for the duration of the summons and in advance of the date he was due to report. It was not then known how much of the Claimant's time the summons would require or whether he would be required to lose time from his assignment as a result thereof. The summons in and of itself is insufficient to establish that an employe will be required to lose time as a result thereof. This is especially true of those individuals reporting as prospective jurors but not selected from the panel of prospective jurors and who may be excused by the court for one or more days.

In this particular case there is in evidence page (1(a) of Carrier's Exhibit "A") a certification from the Court to the effect that the Claimant reported for service on the jury for three days — March 30, April 1 and 3 — for which he received the sum of \$6 per day or a total of \$18. On each of the said three dates the Board is requested to compensate the Claimant for eight hours at time and one-half rate less the amount received in jury fees.

Inasmuch as it is undisputed that the Claimant rendered compensated service on each of the three dates and lost no time from his assignment as a result of the jury duty, this claim can only be viewed as a request that this Board assess punitive damages against the Carrier in the amount requested because it denied the Claimant's request to be excused for jury duty.

According to the record, the Claimant's jury duty services, including lunch and recess, did not exceed six hours on any one day, and in each instance there was a lapse of at least nine hours between the time the employe was released from court and the starting time of his regular assignment.

In view of all the foregoing facts and circumstances, the Carrier earnestly believes its action was neither unreasonable nor in contravention of the intent and purpose of the Rule.

On the basis of the record and all the evidence, the Board is respectfully requested to find that the Carrier did not violate the Agreement and to deny the claim in its entirety.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Claimant was regularly employed on a work shift from 12 A.M. to 8 A.M., Monday through Friday. Pursuant to Article III, (1), Mediation Agreement Case No. A-8488 dated September 2, 1969, Rule 7½ of the Agreement, claimant applied to the court for exemption from jury service which was denied by the Judge.

Article III of the Mediation Agreement also provides that a regularly assigned employe, "shall be paid for actual time lost," when, "required to lose time from his assignment." This language is clear and specific. There is no room for this Board to lend any other meaning to these words. Hardship to a prospective juror is for the court to decide when application is made for exemption. This Board may not add to the agreement to provide relief for the employe and must take the Agreement as it finds it.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 4th day of May 1972.